Filed 4/19/19 Western Overseas Corp. v. KRBL, LLC CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

WESTERN OVERSEAS CORPORATION,

Plaintiff and Respondent,

v.

KRBL, LLC,

Defendant and Appellant.

G056123

(Super. Ct. No. 30-2016-00852262)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Linda S. Marks, Judge. Affirmed.

Law Offices of Matthew C. Mickelson and Matthew C. Mickelson for Defendant and Appellant.

Scopelitis, Garvin, Light, Hanson & Feary, Christopher C. McNatt, Jr. for Plaintiff and Respondent.

* * *

This case involves a contract dispute regarding which contracting party must pay certain costs incurred in the performance of that contract. Western Overseas Corporation (Western) and KRBL, LLC (KRBL) entered into two written agreements concerning Western's services for KRBL. Attached to the first contract were terms and conditions that "govern[ed] all transactions between the Parties," and they required KRBL to pay for third party expenses incurred for Western's services. The second contract, by comparison, was silent on the issue of which party would pay for third party expenses not specifically enumerated in the contract, and it did not contain an integration clause. Western incurred expenses in performing work for KRBL under the second contract and attempted to pass those expenses on to KRBL, which refused to pay. The trial court concluded the terms and conditions attached to the first contract required KRBL to pay the third party expenses incurred in performance of the second contract. Because substantial evidence supports this interpretation, we affirm the judgment in favor of Western.

I.

FACTS

KRBL is in the business of importing rice from India. Western is a U.S. customs broker and international freight forwarder that facilitates the importation of overseas cargo into the United States.

In August 2013, KRBL hired Western as a customs agent to facilitate and manage the entry of KRBL's rice cargo into the United States. The parties entered into a three-page written agreement entitled "CUSTOMS POWER OF ATTORNEY [and] DESIGNATION OF EXPORT FORWARDING AGENT And Acknowledgement of Terms and Conditions" (the 2013 Contract). On the first page of the 2013 Contract, KRBL appointed Western to act as its agent in certain enumerated respects, and it expressly "acknowledge[d] receipt of [Western's] Terms and Conditions of Service governing all transactions between the Parties."

Attached to that first page was a two-page addendum entitled "WESTERN OVERSEAS CORPORATION Terms & Conditions of Service" (the Terms & Conditions). The Terms & Conditions included provisions on a variety of topics, such as indemnification, limitations of liability, retaining records, choice of venue, and other matters, which we discuss in greater detail below. According to the Terms & Conditions, they "constitute[d] a legally binding contract between [Western] and [KRBL]."

In February 2015, KRBL retained Western to provide drayage (i.e., transportation) and warehouse services for KRBL's rice cargo, and the parties entered into a second written agreement entitled "DRAYAGE AND WAREHOUSING AGREEMENT" (the 2015 Contract). The 2015 Contract defined Western's "Scope of Work" as: (1) "Container Pickup – Drayage service from the ports of NY and NJ to warehouse," (2) "Receiving and Palletizing at the warehouse," (3) "Warehousing of Palletized cargo," and (4) "Outbound delivery of Palletized cargo."

The 2015 Contract included a "SCHEDULE OF RATES AND CHARGES" setting forth specific prices for the various components of those four services. For example, the schedule specified under "1. Container Pickup – Drayage Services" that "[d]rayage from the port of NJ to Warehouse per 20' container" would cost "US $395 + 30% fuel surcharge," and it specified under "3. Warehousing" that "[h]andling and put away in storage" would cost "$3.65 per pallet." The schedule also set rates for "[h]ourly labor for special projects, if required."

Importantly, the 2015 Contract was silent on whether other charges would be incurred or billed to KRBL. Although the contract provided "[a]ny additional activity performed as authorized by KRBL will be billed as per mutually agreed," it did not address the issue of costs that were *not* preauthorized by KRBL.

Western handled about 21 shipments of rice for KRBL under the 2015 Contract[1] and sent KRBL invoices for that work. To KRBL's surprise, Western's invoices included not just the costs listed in the 2015 Contract's schedule of rates and charges, but also additional expenses that Western incurred from third parties while performing the drayage and warehousing services for KRBL. These expenses included fees for truck chassis rentals, detention and demurrage fees, overweight container charges, USDA examination fees, and the costs of purchasing equipment and supplies at the warehouse. KRBL objected to the charges when it received the invoices, paying only the undisputed amounts.

Western claimed KRBL owed it about $36,000 and filed a complaint against KRBL for breach of the 2013 Contract and for account stated.[2] In a bench trial, Western maintained the disputed expenses were chargeable to KRBL under the 2013 Contract's Terms & Conditions, but KRBL maintained the Terms & Conditions were inapplicable and the charges were not permitted under the 2015 Contract.

Following the close of Western's case-in-chief, KRBL moved for a directed verdict. (Code Civ. Proc., § 631.8.) On the breach of contract claim, KRBL argued the 2013 Contract "ha[d] nothing to do with the services" rendered under the 2015 Contract. KRBL further argued Western's account stated claim failed because KRBL had disputed Western's invoices and Western had failed to present additional evidence the charges were due. The trial court denied the motion, and KRBL proceeded with its case-in-chief.

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[1] Under the 2015 Contract, after KRBL's containers of rice arrived at the port in either New York or New Jersey and were inspected by the USDA or government agency at the Salson inspection site in New Jersey, Western arranged for the rice's transportation to the Hermann warehouse in New Jersey, where the rice was unloaded, palletized, and temporarily stored.

[2] Western's complaint also included a third cause of action for unjust enrichment, but Western dismissed that claim midway through trial.

The trial court ruled in favor of Western and issued a statement of decision explaining its decision. The court concluded the 2013 Contract's Terms & Conditions "clearly state that costs incurred as a result of services rendered by third parties will be passed on to KRBL." It also reasoned "there was no evidence presented at trial either direct or indirect to support a finding that as a result of mistakes made by Western, KRBL incurred unnecessary costs. There is no evidence that Western made mistakes which resulted in excessive costs. . . . Further, the evidence at trial supports a finding that Western had nothing to gain by incurring costs on behalf of KRBL since the costs were generated by third parties for the services provided, and were charges passed on and billed directly to KRBL."

The trial court further concluded: "A review of the bills indicates that charges for custom exam fees, facility charges, chassis rentals, etc. were all part of the costs borne by KRBL. The evidence supports a finding that KRBL is billed for the costs incurred in handling, transporting, and getting the shipped goods ready for distribution. The costs are taken directly from the third party billing statements, and this includes the warehouse costs from Hermann Warehouse. [¶] KRBL presented evidence that on one occasion there was a delay caused by Western, but no evidence was presented to support how this delay impacted KRBL in order to avoid the costs incurred. Based on a preponderance of the evidence, Western met their burden of proof that amounts were billed but not paid by KRBL for services provided."

The trial court found in favor of Western and against KRBL in the amount of $18,213.94, plus interest. The court derived this figure by utilizing the reduced amount Western sought at trial, less a $12,135 charge from Maersk that the court determined was not recoverable. The court entered a judgment for Western, and KRBL appealed.

II.

DISCUSSION

KRBL argues Western was not entitled to pass through third party expenses under the 2015 Contract as a matter of law. We conclude the 2015 Contract neither authorizes nor prohibits the passing through of these costs, the 2013 Contract's Terms & Conditions required KRBL to pay these expenses, and the Terms & Conditions of the 2013 Contract "govern all transactions between the Parties," including the drayage and warehousing services at issue here. We therefore affirm the judgment.

A. *Standard of Review*

The standard of review applicable to a trial court's interpretation of a contract depends on whether extrinsic evidence was offered to aid in the contract's interpretation. "When no extrinsic evidence is introduced, or when the competent extrinsic evidence is not in conflict, the appellate court independently construes the contract. [Citation.] When the competent extrinsic evidence is in conflict, and thus requires resolution of credibility issues, any reasonable construction will be upheld if it is supported by substantial evidence. [Citations.]" (*Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc*. (2003) 109 Cal.App.4th 944, 955-956.) Here, the trial court admitted conflicting extrinsic evidence concerning the parties' prior dealings. We therefore review the court's interpretation of the contracts for substantial evidence.

B. *Analysis*

"'The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties.' [Citations.] 'Such intent is to be inferred, if possible, solely from the written provisions of the contract.' [Citations.] 'If contractual language is clear and explicit, it governs.' [Citation.]" (*State of California v. Continental Ins. Co.* (2012) 55 Cal.4th 186, 195.) We begin our analysis with a review of the relevant contract provisions.

1. The 2015 Contract is Silent on the Issue of Third Party Costs

We start with the 2015 Contract because the Western invoices in question relate to Western's drayage and warehousing work under that contract. As noted above, the 2015 Contract's schedule of rates sets forth specific pricing for various components of Western's drayage and warehousing services. However, the 2015 Contract never states KRBL would not incur other charges, and the schedule of rates does not purport to be an all-inclusive list of charges. The 2015 Contract also fails to specify which party would pay third party expenses incurred for Western's services. Although the agreement states "[a]ny additional activity performed as authorized by KRBL will be billed as per mutually agreed," it is silent on whether KRBL would pay costs it did not preauthorize.

Of course, the parties could have specified in the 2015 Contract that Western would be responsible for any additional expenses incurred, or that the prices listed in the schedule of rates would be the *only* items billed to KRBL. But they did not. We therefore reject KRBL's argument the 2015 Contract "'occupied the field'" on the issue of permissible expenses by "specifically detail[ing] the entire universe of charges that were permissible." KRBL overstates the scope and effect of the 2015 Contract.

2. The 2013 Contract's Terms & Conditions Allow Western to Pass On Third Party Costs to KRBL

The 2013 Contract's Terms & Conditions, in contrast, expressly require KRBL to pay third party expenses.

To begin with, Section 1 broadly defines " '[t]hird parties'" to include "'carriers, truckmen, cartmen, lightermen, forwarders, OTIs, customs brokers, agents, warehousemen and others to which the goods are entrusted for transportation, cartage, handling and/or delivery and/or storage or otherwise.'"

Section 4 then states in pertinent part: "No Liability for The Selection or Services of Third Parties . . . . [N]or does [Western] assume responsibility or liability for any action(s) and/or inaction(s) of . . . third parties." Section 9(d) similarly provides:

"Disclaimers; Limitation of Liability. [¶] . . . In no event shall [Western] be liable or responsible . . . for the acts of third parties." Further, Section 19 provides: "The compensation of [Western] for its services . . . is *in addition to* the rates and charges of all carriers and other agencies selected by [Western] to transport and deal with the goods." (Italics added.)

Though perhaps no model of drafting clarity, these provisions collectively show Western was not responsible for third party expenses incurred while performing services for KRBL under the 2013 Contract. Instead, KRBL agreed to pay those costs.[3]

3. The 2013 Contract's Terms & Conditions Apply to Western's 2015 Drayage and Warehousing Services

That brings us to the central issue of whether the 2013 Contract's Terms & Conditions apply to the drayage and warehousing services performed under the 2015 Contract. We conclude they do. After all, the first page of the 2013 Contract specifically states the attached "Terms and Conditions of Service govern[ ] *all transactions* between the Parties." (Italics added.) (See also Civ. Code, § 1642 ["Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together."].)

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[3] Section 2 of the Terms & Conditions supports this result. Section 2 states that Western — which is defined to include not just Western, but also "its subsidiaries [and] related companies" — "acts as the 'agent' of [KRBL] for the purpose of performing duties in connection with . . . post entry services . . . [and] for arranging for transportation services or other logistics services in any capacity other than as a carrier." Thus, the scope of Western's agency was not limited to customs brokering, but also allowed Western to arrange for the transportation of and logistics services for KRBL's cargo. That agency relationship presumably included the ability to incur expenses on KRBL's behalf. (See *Fidelity Mortgage Trustee Service, Inc. v. Ridgegate East Homeowners Assn.* (1994) 27 Cal.App.4th 503, 509 ["As a general rule, an agent is entitled to indemnification by its principal for losses incurred by the agent in the execution of the agency"].)

Ignoring that provision, KRBL argues the 2013 Contract is not "some overall supreme controlling document which will govern the relationship between the parties in all matters (customs related or not) for all time forward." Yet that is *precisely* what the Terms & Conditions are; by their own terms, they "govern[ ] *all transactions between the Parties*." (Italics added.)

KRBL also argues Sections 2, 4, and 19 of the Terms & Conditions only apply to Western's customs-related work, but those provisions do not contain that limitation. For example, Section 2 states Western is KRBL's agent "for the purpose of performing duties in connection with the entry and release of goods, post entry services, the securing of export licenses, the filing of export and security documentation on behalf of [KRBL] and other dealings with Government Agencies or for arranging for transportation services or other logistics services."

KRBL alternatively argues the 2015 Contract, as the subsequent agreement, should supersede any conflicting terms in the 2013 Contract. But the 2015 Contract is silent on the issue of passing on costs, as already noted. There is no "conflict" to resolve.

KRBL might have a colorable argument against the application of the 2013 Contract's Terms & Conditions to the 2015 drayage and warehousing services if the 2015 Contract contained an integration clause declaring the 2015 Contract to be the entire and exclusive agreement between the parties concerning Western's drayage and warehousing services. The 2015 Contract contains no such provision.

4. Substantial Evidence Supports the Trial Court's Interpretation of the Contracts

Looking outside the four corners of the contracts, KRBL contends Western's Vice-President of Ocean Operations admitted at trial that the 2013 Contract does not cover the expenses at issue. KRBL misconstrues her testimony. The question posed was whether the "Customs Power of Attorney Agreement" "cover[s] things for warehousing of goods from a client." The Vice-President answered, "It does not," but

then qualified her answer by adding that Section 2 of the attached Terms & Conditions designated Western as KRBL's agent. We do not consider this an admission that the Terms & Conditions are inapplicable to Western's invoices for drayage and warehousing services. KRBL would have a stronger argument if the question had been whether the Terms & Conditions apply to invoices for the drayage and warehousing services, and if the Vice-President unequivocally had answered, "No." But that was neither the question posed nor the answer provided.

KRBL also argues Western had not passed through third party charges to KRBL in years past, citing testimony by KRBL's general manager that Western never had charged KRBL extra "fees" before this dispute. The trial court found this testimony "hard to believe," however, and we cannot second-guess the court's evaluation of witness credibility or its decision to discredit this testimony. Further, Western's Vice-President of Ocean Operations contradicted this evidence when she testified Western had billed "demurrage and detention charges" to KRBL in years past, and KRBL had paid them. In any event, as the court noted, neither party proffered any invoices or other tangible evidence at trial to support their witnesses' competing testimony concerning the parties' past dealings.

In sum, substantial evidence supports the trial court's interpretation of the contracts, including its conclusion the Terms & Conditions permitted Western to pass through third party expenses to KRBL. Because the judgment may be sustained based on Western's breach of contract cause of action, we need not address KRBL's arguments regarding its motion for judgment or the account stated cause of action.[4]

[4] To the extent KRBL also purports to challenge the trial court's calculation of the amount owed and the inclusion of certain specific line items in that calculation, it provides no separate argument heading on that issue. We therefore treat the issue as waived. (*Roe v. McDonald's Corp*. (2005) 129 Cal.App.4th 1107, 1114.)

III.

DISPOSITION

The judgment is affirmed. Western shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

ARONSON, P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.